

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
)	
Charter Communications)	CSR-6672-E
)	CSR-6673-E
)	CSR-6674-E
Four Petitions for Determination of Effective)	CSR-6675-E
Competition in Twenty-Seven Local Franchise)	
Areas in Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2005

Released: July 1, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers four petitions filed with the Commission by Charter Communications, on behalf of its affiliates, ("Charter") pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission's rules for a determination that Charter's cable systems serving twenty-seven Michigan communities (the "Communities") are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and are therefore exempt from cable rate regulation.¹ The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Charter cable systems are subject to effective competition in the listed Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel

¹ 47 C.F.R. §§ 76.7, 76.905(b)(1)& (2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁵ Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁸ We further find that the Charter cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.⁹ Charter has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁰ Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SCBA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹¹ Charter asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹² With respect to

⁵ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ Charter Petitions at 5 and Exhibit 2.

¹⁰ *Id.* at 4 and Exhibit 1.

¹¹ *Id.* at 6-7. Charter acknowledges that a standard five-digit zip code in certain cases may not coincide precisely with the boundaries of a cable operator's franchise area. To overcome this potential problem, Charter has applied a competitive penetration methodology. The Commission has approved this methodology for determining DBS subscribership. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County, California*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002).

¹² Charter Petitions at 6. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 18, 2005). The Declaration of Ms. Jones-Williams states that Charter is the largest multichannel video program provider in 23 of the 25 Communities at issue.

the communities of Evart and Richmond, Charter asserts that the respective aggregate allocated DBS subscriber figures (312 and 230) are slightly larger than Charter's subscriber counts (289 and 142) in those respective Communities. However, Charter contends that because there are two major DBS providers in those Communities, it is likely that Charter is still the largest individual MVPD in these franchise areas.¹³

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted Communities. With regard to the Communities of Evart and Richmond, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Charter and the DBS providers. If the subscriber penetration for both Charter and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁴ In Evart, the combined DBS penetration rate is 44.6 percent and Charter's penetration rate is 41.3 percent.¹⁵ In Richmond, the combined DBS penetration rate is 36.7 percent and Charter's penetration rate is 22.7 percent.¹⁶ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁷ Charter asserts that it is subject to effective competition in the Alpine, Green, Plainfield and Richmond Franchise Areas under the low penetration effective competition test.¹⁸ Charter submitted information listed on Attachment A showing that its penetration rate in the Alpine Township Franchise Area is 2.8% percent; in the Green Township Franchise Area, its penetration rate is 26.9 percent; in the Plainfield Township Franchise Area, the penetration rate is 6.3 percent; and in the Richmond Township Franchise Area, the penetration rate is 22.7 percent. Accordingly, we conclude that Charter has demonstrated the existence of low penetration effective competition under our rules in the Alpine Township, Green Township, Plainfield Township and the Richmond Township Franchise Areas.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Charter Communications for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

¹³ Charter Petitions at n.16. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 18, 2005).

¹⁴ *See Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁵ 312 DBS subscribers ÷ 699 Evart 2000 Census Households = 44.6%; 289 Charter subscribers ÷ 699 Evart 2000 Census Households = 41.3%.

¹⁶ 230 DBS subscribers ÷ 626 Richmond 2000 Census Households = 36.7%; 142 Charter subscribers ÷ 626 Richmond 2000 Census Households = 22.7%.

¹⁷ 47 U.S.C. § 543(1)(1)(A).

¹⁸ Charter Petition at 8. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 18, 2005).

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Charter Communications in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹⁹ 47 C.F.R. § 0.283.

Attachment A

Charter Cable Systems Subject to Competing Provider Effective Competition

CSR-6672-E through CSR-6675-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Algoma, Township	MI0675	21.6%	2,588	560
Belding, City	MI0455	25.8%	2,185	563
Big Rapids, City	MI0225	19.7%	3,388	669
Big Rapids, Township	MI0232	19.7%	1,200	236
Cannon, Township	MI0676	19.8%	3,913	775
Cedar Springs, City	MI0945	34.4%	1,115	384
Colfax, Township	MI1011	24.1%	734	177
(Mecosta County)				
Courtland, Township	MI0674	25.5%	1,936	494
Edmore, Village	MI0939	34.8%	491	171
Eureka Township	MI0300	20.8%	1,179	245
Ewart, City	MI0693	44.6%	699	312
Gaines, Township	MI0648	22.1%	2,269	502
(Genesee County)				
Green, Township	MI0231	22.4%	1,247	279
(Mecosta County)				
Greenville, City	MI0287	20.8%	3,303	688
Howard City, Village	MI1018	40.6%	576	234
Ionia, City	MI0381	26.9%	2,421	652
Mecosta, Township	MI1469	23.6%	938	221
Oakfield, Township	MI0730	21.5%	1,814	390
Reed, City	MI0451	36.6%	999	366
Richmond, City	MI0673	36.7%	626	230

(Osceola County)

Rockford, City	MI0673	21.1%	1,741	368
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Solon Township	MI0944	27.8%	1,682	467
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(Kent County)

Sparta, Village	MI0680	23.3%	1,618	377
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Spencer, Township	MI1331	34.8%	1,357	472
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Stanton, City	MI0854	32.6%	555	181
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Charter Systems Subject to Low Penetration Effective Competition

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
Alpine, Township	MI0678	5,550	158	2.8%
Green, Township	MI0231	1,247	335	26.9%
(Mecosta County)				
Plainfield, Township	MI0677	11,038	697	6.3%
Richmond, Township	MI0692	626	142	22.7%

(Osceola County)

CPR = Percent DBS penetration

+ = See Charter Petitions